IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.18426 of 2019

==

M/s Jay Mata Di Travels, Proprietor- Dharmendra Singh, At- Chauhatta, Hajipur through its Proprietor Dharmendra Singh, S/o- Shri Bharat Singh, Aged about 41 years, male, Resident of Minapur, Hajipur, Chhippi Tola, Chauhatta, Hajipur, Vaishali, Bihar- 844101.

... ... Petitioner

Versus

1. Union of India through the Commissioner of Central GST and Central Excise, Patna- II, 4th Floor, Kendriya Rajaswa Bhawan (Annexe Building), Bir Chand Patel Path, Patna- 800001.
2. The Commissioner (Appeals), Customs, Central GST and Central Excise, Patna, 2nd Floor, Kendriya Rajaswa Bhawan (Annexe Building), Bir Chand Patel Path, Patna- 800001.
3. The Assistant Commissioner, Central GST and Central Excise, Vaishali Division, Dak Bunglow Road, Hajipur- 844101.

... ... Respondents

==

Appearance :

For the Petitioner	:	Mr. Amit Pandey-Advocate
For the Respondents	:	Mr. S. D. Sanjay (ASG-1)
		Mr. Anshay Bahadur Mathur-CGC

==

CORAM: HONOURABLE MR. JUSTICE ASHWANI KUMAR SINGH
and
HONOURABLE MR. JUSTICE ANIL KUMAR SINHA

ORAL JUDGMENT
(Per: HONOURABLE MR. JUSTICE ASHWANI KUMAR SINGH)

15-11-2019 Heard learned counsel for the petitioner and learned Additional Solicitor General.

2. In the instant application, the petitioner has challenged the Order-In-Appeal No.18/Pat/ST/Appeal/ 2019-20 dated 03.05.2019 passed by the Commissioner (Appeals), Customs, Central GST and Central Excise, Patna. He has also challenged the Order-In-Original No.17/ASST. COMMR/CGST & CX/ST/VD/ 2018-19 dated 23.10.2018 passed by the Assistant Commissioner of Central GST and Central Excise, Vaishali Division, Hajipur.

3. At the outset, a preliminary objection has been raised by the learned Additional Solicitor General appearing for the respondents regarding maintainability of the present application in view of availability of alternative remedy to the petitioner under Section 86 of the Finance Act, 1994 (for short 'Act').

4. Learned counsel appearing for the petitioner while admitting that there is a statutory remedy available to the petitioner for the redressal for his grievance submitted that the authorities were not justified in determining the amount of Service Tax Payable by the petitioner on mere assumptions and presumptions. He submitted that the burden of proof for determining the amount of Service Tax Payable by the petitioner was upon the authorities. According to him, the imposition of penality without giving any findings on the reasons for such assumptions is not justified in law. Lastly, he contended that the mere availability of a statutory remedy for the redressal of the grievances can not be a bar to maintain an application under Article 226 of the Constitution of India.

5. True, it is that despite existence of an alternative remedy, it is within the discretion of the High Court to entertain an application under Article 226 of the Constitution of India. However, when the statutory remedy is created under the Act for the redressal of grievances, it would not be proper to entertain the writ petition ignoring the statutory dispensation.

6. Hence, in view of the availability of an equally

efficacious statutory remedy of appeal to the petitioner under the Act, we are not inclined to entertain the present application in extra writ jurisdiction under Article 226 of the Constitution of India.

7. Accordingly, the application is dismissed with liberty to the petitioner to avail of the statutory remedy provided under the Act. However, in case, an appeal before the Tribunal is filed under Section 86 of the Finance Act, 1994 within two weeks from today along with an application for condonation of delay caused in filing the appeal, the Tribunal shall condone the delay and dispose of the appeal on merits in accordance with law.

(Ashwani Kumar Singh, J)

(Anil Kumar Sinha, J)

Vikash/-

AFR/NAFR	NAFR
CAV DATE	N.A.
Uploading Date	18.11.2019
Transmission Date	18.11.2019